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EXAMINER	
SAMS, MATTHEW C	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BERNHARD RAAF

Appeal 2009-002278
Application 10/009,858
Technology Center 2600

Decided: September 8, 2009

Before JOSEPH F. RUGGIERO, CARLA M. KRIVAK,
and ELENI MANTIS MERCADER, *Administrative Patent Judges*.

KRIVAK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from a final rejection of claims 25-32, 34-38, 40-43, and 45-48. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

STATEMENT OF THE CASE

Appellant's claimed invention is a method and system for controlling transmission power in a radio system. A coding method is used for coding Transmitter Power Control (TPC) bits such that added redundancy is provided (Spec. 5:23-27). This redundancy, resulting from dependency of the coded bits on both the value of the TPC bits and the value of additional bits coded therewith, allow additional estimated values to be obtained for the transmitted power control information, and thus the reliability of the power control information is increased (Spec. 6:4-9).

Independent claim, reproduced below, is representative of the subject matter on appeal.

> 25. A method for controlling the transmission power in a radio system, the method comprising the steps of:
>
> evaluating a signal received by a receiver via a transmission channel of the radio system from a transmitter;
>
> producing power control information as a function of the signal;
>
> embedding the power control information in a timeslot structure together with further data to be transmitted in the same timeslot to said transmitter
>
> coding, in the receiver, the power control information in one time slot in a manner where the power control information is coded, with the addition of redundancy, together with the further data to be transmitted in the same time slot to form a common data word, with at least one bit value in the data word depending on the power control information and on the further data; and

transmitting the coded power control information in one timeslot to the transmitter, together with the further data to be transmitted in the same time slot; and

setting, in the transmitter, the transmission power as a function of the transmitted coded power control information.

REFERENCES

Hogan	US 2001/0018741 A1	Aug. 30, 2001
Uesugi	EP-0 893 899 A2	Jan. 27, 1999

The Examiner rejected claims 25-32, 34-38, 40-43, and 45-48 under 35 U.S.C. § 103(a) based upon the teachings of Uesugi.

Appellant contends that neither Uesugi nor Hogan teaches embedding power control information in a timeslot together with other data to be transmitted in the same time slot and coding, in a receiver, the power control information in one time slot, forming a common data word having at least one bit value depending on the power control information (App. Br. 10; Reply Br. 2).

ISSUE

Has Appellant established that the Examiner erred in combining Uesugi with Hogan?

FINDINGS OF FACT

1. Appellant's invention discloses power control information, transmitted in one timeslot, coded together with data that is intended to be transmitted in the same timeslot (Spec. 6:12-14). Thus, the power control information (TPC bits) transmitted in the one timeslot is not simply

transmitted repeatedly, but is coded together with other bits such as TFI information or other data bits (Spec. 6:15-22).

2. Uesugi teaches a CDMA communications apparatus that judges the rate of transmission data by a first slot of the transmission frame (col. 3, ll. 16-25). Further, if the transmission data rate is low, the same data as the transmission data is repeatedly transmitted (col. 19, ll. 46-48).

3. Hogan teaches a method and apparatus for encrypting data and correction error code. An encryption mask is bitwise exclusive-OR'ed (XOR'ed) with an error code correction block (ECC) (Abstract). The result of the bitwise XOR is an encrypted block including encrypted user data and encrypted redundancy data (¶ [0027]).

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). "[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability." *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). If the Examiner's burden is met, the burden then shifts to the Appellants to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See In re Oetiker*, 977 F.2d at 1445.

ANALYSIS

The Examiner rejected the claims on the basis of Uesugi and Hogan stating that Uesugi does not explicitly recite at least one bit value in a data word depending on power control information and further data (Ans. 4). The Examiner then states Hogan teaches encryption and error coding correction including using an exclusive-OR logic operation. Thus, it would be obvious to combine Uesugi with Hogan because Hogan enables a "simple error correction that reduces the need for retransmission of lost data" (Ans. 4).

Appellant asserts, however, that Uesugi does not teach or suggest embedding "'power control information in a timeslot structure together with further data to be transmitted in the same timeslot'" as alleged by the Examiner (App. Br. 10). Rather, Uesugi teaches a multiplexer that multiplies a pilot symbol and a power controlling signal. Thus, power control information is not coded in a receiver in one timeslot with the addition of redundancy together with further data to be transmitted in the same time slot to form a common data word as claimed (App. Br. 11; Reply Br. 2). Further, the Examiner's statements that Uesugi teaches, in column 3, lines 16-19 and Figs. 16A, 16B, power control information embedded in a timeslot structure (first slot) together with further data (pilot symbols and D_0-D_6) to be transmitted in the same timeslot (Ans. 9), are without merit (App. Br. 11). That is, Uesugi teaches repeatedly sending transmission data at a low data rate (FF 2; App. Br. 11-12; Reply Br. 2), rather than embedding and coding power control information and further/additional data in the same timeslot, as does Appellant's claimed invention.

The Examiner's statement that Hogan teaches encryption and error coding correction including the usage of an XOR logic operation (Ans. 4; FF 3) is correct. However, as Appellant asserts, combining Hogan with Uesugi does not cure Uesugi's deficiencies and would not result in Appellant's claimed invention as Hogan does not relate to power control and does not disclose that one bit value in a data word depends on the power control information and on the further/additional data as claimed (App. Br. 12; Reply Br. 2).

CONCLUSION

Appellant has established that the Examiner erred in combining Uesugi with Hogan.

DECISION

The Examiner's decision rejecting claims 25-32, 34-38, 40-43, and 45-48 is reversed.

REVERSED

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